

Remarks

Rejections under 35 U.S.C. § 102

Claims 1, 3, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,727,748, issued to Brown [*hereinafter Brown*]. This rejection is understood to be based in part on the premise that *Brown* discloses a bait container having a cylindrical housing C with an access opening (not labeled), an at least partially perforated carriage 8 located within the housing, a post 6 extending from the carriage and a door 13 substantially located in a vertical plane parallel to the central axis and arranged to move in the vertical plane between an open position to expose the access opening and a closed position to at least partially cover the access opening in response to movement of the post along the central axis. The rejection is also understood to be based in part on the premise that *Brown* further discloses a handle L and a lip 3.

Applicant traverses the rejection. Claim 1 recites a bait container comprising “a housing defining . . . a chamber to accommodate water and bait therein.” Further, claim 1 recites a carriage that defines “at least one perforation to allow the passage of water therethrough.” Claim 1 also recites “a door . . . arranged to move in [a] vertical plane between an open position . . . and a closed position to . . . hinder egress of the bait from the chamber. . . .”

By contrast, *Brown* discloses a toothbrush holder. The canister is depicted in the figures as accommodating toothbrushes, rather than bait and water. On the contrary, given that the closure 12 is provided with vent openings 14 “to enable ventilation to facilitate the drying of the brushes” (see, e.g., column 2, lines 45-48), it is Applicant’s understanding that the canister is not intended to contain more than a negligible amount of water, which would hinder the drying of the brushes. Further, the lifter disc or plate 8 is not described as defining at least one perforation to allow the passage of water therethrough, as recited in claim 1.

Based on at least the above reasoning, Applicant respectfully submits that *Brown* does not disclose all of the limitations recited in claim 1, and therefore does not anticipate claim 1. Claims 3, 8, and 9 depend from claim 1 and incorporate all of the limitations recited in claim 1. Accordingly, *Brown* does not anticipate claims 3, 8, and 9.

Applicant respectfully requests that the rejection of claims 1, 3, 8, and 9 under 35 U.S.C. § 102(b) be withdrawn.

Rejections under 35 U.S.C. § 103

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown*. This rejection is understood to be based in part on the premise that it would have been an obvious design choice to use a polyhedral housing rather than a cylindrical housing.

Applicant traverses the rejection. As discussed above, *Brown* does not disclose a bait container as recited in claim 1, from which claim 10 depends, and the limitations of which claim 10 incorporates in their entirety. Accordingly, *Brown* neither discloses nor suggests the bait container recited in claim 10. Applicant therefore respectfully requests withdrawal of the rejection of claim 10 under 35 U.S.C. § 103(a).

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,686,788, issued to Hartman [*hereinafter Hartman*] in view of U.S. Patent 2,024,692, issued to Kirmss [*hereinafter Kirmss*]. This rejection is understood to be based in part on the premise that *Hartman* discloses a bait container having a housing 10 that defines an access opening 13, a perforated carriage 16 located within the housing, and a post 20 extending from the carriage substantially along the central axis and movable along the central axis. *Hartman* is also asserted to disclose a door 14 substantially located in a vertical plane parallel to the central axis and arranged to move between an open position and a closed position as shown in Fig. 8 and Fig. 7 by rotating around pin 15. The rejection is further understood to be based in part on the additional premise that *Kirmss* discloses a container 1 having a vertically movable door 19 to cover or expose an access opening 14.

Applicant traverses the rejection. *Kirmss* discloses a toothbrush holder, rather than a bait container. Per MPEP § 2141.01(a), to rely on a reference under 35 U.S.C. § 103(a), the reference must be analogous prior art. In particular, "[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ

313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

By the standards set forth above, toothbrush holders are not analogous art relative to bait containers. Applicant submits that a toothbrush holder would not logically commend itself to an inventor's attention in considering the problem of preventing the egress of bait from a bait container. Accordingly, Applicant respectfully submits reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper. For at least these reasons, Applicant respectfully requests that the rejection of claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* be withdrawn.

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* as applied to claim 3, and further in view of U.S. Patent 1,844,285, issued to Johnson [*hereinafter Johnson*]. As discussed above in connection with claims 1-3, reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper. Further, *Johnson* discloses a weight sticker tube for holding labels indicating the weight of an item. See *Johnson* at column 1, lines 1-6. By the standards set forth above, weight sticker tubes are not analogous art relative to bait containers. Accordingly, reliance on *Johnson* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper. For at least these reasons, Applicant respectfully requests that the rejection of claims 4-5 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* and further in view of *Johnson* be withdrawn.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* as applied to claim 1, and further in view of U.S. Patent 6,543,179, issued to Lee [*hereinafter Lee*]. As discussed above in connection with claims

1-3, reliance on the combination of *Hartman* and *Kirmss* as the foundation for a rejection under 35 U.S.C. § 103(a) is improper. For at least these reasons, Applicant respectfully requests that the rejection of claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over *Hartman* in view of *Kirmss* and further in view of *Lee* be withdrawn

Conclusion

On the basis of the foregoing, Applicant respectfully submits that claims 1-10 are now believed to be in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Boyd Perttu
By attorneys/agents:

MOORE, HANSEN & SUMNER, PLLP
225 South Sixth Street
Suite 4850
Minneapolis, Minnesota 55402
(612) 332-8200

Date: March 29, 2005

By 
Allen J. Oh, Registration No. 42,047